

Agreement No. <u>5292-1</u>

XEROX

AUTHORIZED MEMORYWRITER SERVICE AND SUPPLIES DEALER AGREEMENT

This Agreement is between Britt Products Corporation dba Britt Business Systems, Inc. ("Dealer"), having its principal offices at 415 E. Broad Street, Suite 105, Columbus, OH 43215 [city, state] and XEROX CORPORATION ("Xerox"), a New York corporation with its principal offices at Stamford, Connecticut. This Agreement applies only to the Xerox brand memorywriter supplies and dealer provided service to end users for the memorywriter 600, 6000 and 6200 family of products.

A.1 APPOINTMENT

- A.1.1 Xerox hereby appoints Dealer ("Dealer" or "You" or "Your") as an authorized non-exclusive Xerox Memorywriter Service and Supplies Dealer.
- A.1.2 Your Authorized Xerox Dealer Agreement and the Service Addendum thereto currently in effect insofar as it applies to the sale of and service for Xerox Memorywriters (the current Dealer Agreement) shall expire December 31, 1991 [date] and shall be superseded by this Agreement.

B.1 TERM

- B.1.1 The term of this Agreement commences January 1, 1992 [date] and expires December 31, 1994, assuming the terms and conditions of this agreement are fully met throughout the period
- B.1.2 All terms and conditions of the current Dealer Agreement which by their terms or nature survive the termination of such agreement, including but not limited to Paragraphs 7.2, 7.5, 7.6, 14.1, 15.1, 15.2, 17.1, 17.2, 18.1, 18.2, 18.3, 18.4, 20.1, and 20.2 apply to and are incorporated by reference in this agreement.

C.1 TERRITORY/CONDUCT

- C.1.1 The geographic territory in which Dealer may service Xerox Memorywriter equipment and sell supplies and parts therefor remains the same as it was under the current Dealer Agreement insofar as such agreement applied to sales of Xerox Memorywriters. You may only sell Xerox parts and supplies to Memorywriter end-users, and provide Memorywriter service, within the territory and use your best efforts to do so.

C.1.2 Assigned Territory (Counties)

Ohio Counties of: Delaware, Franklin.

C.1.3 Dealer may only call or represent itself as an Authorized Xerox Memorywriter Service and Supplies Dealer. Xerox shall be obligated to sell to Dealer only the quantities of replacement parts or supplies as are reasonably necessary to meet the requirements of end-users Xerox Memorywriter typewriters in Dealer's geographic territory.

C.1.4 Dealer shall not appoint sub-dealers or sell the Products for resale. Xerox may periodically inspect and audit Dealer to verify that Dealer is complying with this obligation and all other obligations of Dealer hereunder.

C.1.5 Dealer conduct in the market at all times must be performed in an ethical manner reflecting favorably upon Xerox and its valuable reputation, goodwill and image.

D.1 INVENTORY

D.1.1 Subject to availability of replacement parts and supplies, Dealer shall at all times maintain an inventory of such items sufficient to satisfy reasonably anticipated end-user demand.

E.1 PAYMENTS

E.1.1 Parts and Supplies prices will be at the current dealer price in effect when the order is received or the parts are shipped, whichever is lower, and prices are F.O.B. Xerox plant or warehouse and title and risk of loss passes to Dealer when parts/supplies are placed on board the shipper. Payment is due upon receipt of Xerox invoice(s).

E.1.2 Cancellation charges: Any order cancelled in whole or part within 7 business days of the agreed upon shipment date may be subject to a cancellation charge of 5% of the invoice price.

F.1 INSURANCE

F.1.1 At all times during the existence of this Agreement Dealer will maintain contractual and general liability insurance in at least the amount of \$1 million dollars single limit coverage per occurrence for bodily injury and property damage and at least \$2 million dollars aggregate coverage.

G.1 XEROX SALES

G.1.1 Xerox reserves the right to compete with you respecting the sale of Memorywriter parts, supplies, or service for Memorywriters to customers within your territory.

H.1 GOVERNMENT ACCOUNTS

- H.1.1 Xerox has longstanding relationships with federal and state governmental accounts, has specialized expertise in dealing with such accounts, and believes that such accounts are best served by vendors with the capabilities of a national manufacturer.
- H.1.2 Federal accounts: As to federal government accounts, you shall not submit an offer for any General Services Administration Schedule contract covering Memorywriter service, parts, or supplies. Sales of supplies, service, or parts to federal accounts under other circumstances (i.e., non-schedule contract sales or off-contract sales) are permitted.
- H.1.3 State accounts: As to state government accounts, Dealer shall not submit an offer for any state contract covering Memorywriter service, parts, or supplies where the effect of such contract is to give sole source on a statewide basis. Sales of Memorywriter service, parts, or supplies to state accounts under other circumstances are permitted.

I.1 XEROX TRADEMARKS, LOGOS AND TRADENAMES

- I.1.1 Any trademarks, logos, trade names, and identifying slogans affixed by Xerox to any supplies or parts (or to any accompanying labels, containers, or cartons), whether or not registered, are the exclusive or licensed property of Xerox and shall not be used by Dealer except in connection with the advertisement, promotion, and sale of the supplies or parts.
- I.1.2 No right is granted to Dealer to use Xerox trademarks, logos, or trade names except the limited permission for Dealer to use, in accordance with Xerox guidelines, the trademark "Xerox" and the Xerox logo in connection with the advertisement, promotion, and sale of the Products.
- I.1.3 Permission to use the trademark "Xerox" and Xerox logos, trade names, or identifying slogans shall terminate upon the expiration or termination of this Agreement. Dealer shall then immediately cease representing itself as an "Authorized Xerox Memorywriter Service and Supplies Dealer" or as being authorized to represent Xerox or the Xerox parts, service, or supplies and shall cease using the trademarks, trade names, logos, and slogans of Xerox (except those appearing on units of parts or supplies remaining in inventory). You shall promptly return to Xerox all technical, advertising, promotional, and sales materials, and all confidential Xerox information, which (1) you acquired pursuant to this Agreement; (2) are then in your possession or control; and (3) utilize Xerox trademarks, trade names, or logos. The actual purchase price (if any) of returned materials, plus reasonable shipping costs, shall be refunded by Xerox.
- I.1.4 You shall not use the name "Xerox" as part of your corporate or business name or otherwise suggest that it is owned or controlled by Xerox. You shall not cause any advertising to be published, or make any representation (oral or written), which might confuse, mislead, or deceive the public or which is detrimental to the good name, trademarks, goodwill, or reputation of Xerox or the Products. You further agree not to contest any Xerox trademarks, logos, or trade names or to use or attempt to register any trademark or trade name that is confusingly similar.
- I.1.5 You shall not deface or remove any Xerox trademark, logo, trade name, or serial number on any supplies or parts or their packaging. You shall not add any mark, name, trademark, logo, or serial number to any supplies or parts or their packaging without Xerox' prior written consent

J.1 TERMINATION/NON-RENEWAL

- J.1.1 Termination Without Cause:** Xerox may terminate or decline to renew this Agreement, without cause, upon three months prior written notice to you. You may terminate or decline to renew this Agreement without cause upon one month prior written notice to Xerox. Notice under this Section shall not preclude earlier termination for cause as provided in Section 15(b).
- J.1.2 Xerox Termination for Cause:** Xerox may terminate this Agreement effective upon written notice of termination to you in any one of the following events:
- J.1.2.1** You materially breach this Agreement and such breach remains uncured, in Xerox' sole determination, following the cure period, if any, set forth in the notice of termination;
 - J.1.2.2** A petition for relief under any bankruptcy legislation is filed by or against you, or you make an assignment for the benefit of creditors, or a receiver is appointed for all or a substantial part of your assets, and such petition, assignment or appointment is not dismissed or vacated within thirty (30) days;
 - J.1.2.3** You become insolvent or unable to pay its debts, or ceases to pay its debts as they mature in the ordinary course of business;
 - J.1.2.4** You attempt to establish sub-dealers or otherwise markets the supplies or parts to end-users; or
 - J.1.2.5** You promote or sell Memorywriter parts, supplies, or service outside the Territory.

K.1 EFFECT OF TERMINATION OR NON-RENEWAL

- K.1.1** Termination or non-renewal by either party shall not relieve the other party of its obligation to make any and all payments due under this Agreement. All monies due to Xerox from you shall become immediately due and payable upon any termination except Xerox' termination without cause.
- K.1.2** Termination or non-renewal shall not relieve either party of obligations incurred prior to termination or of obligations which by their nature or term survive termination or non-renewal.
- K.1.3** Upon termination or non-renewal, you shall (1) immediately cease representing itself as an "Authorized Xerox Memorywriter Service and Supplies Dealer" and cease using Xerox trademarks, trade names, slogans, or logos; (2) return to Xerox all technical, advertising, promotional, and sales materials, and all confidential Xerox information, that were supplied to you by Xerox and that then remain in your possession; and (3) take appropriate steps to remove or correct all materials, including signs and telephone directory listings, that identify you as an "Authorized Xerox Memorywriter Supplies and Service Dealer".
- K.1.4** Notice of termination or non-renewal shall automatically cancel delivery of any supplies or parts scheduled for delivery after the date of termination, except order(s) previously affirmed by Xerox. During the notice period, any shipment of Products will be on a cash-only basis. If your account is not current or you are otherwise in default, no further shipments will be made during the notice period.

L.1 ASSIGNMENT

- L.1.1 Xerox entered into this Agreement based upon the personal representations of your principals as to their knowledge of the Territory, ability to market the supplies, provide service, and your financial status. Assignment, transfer or the sale of any of its rights, or delegation of any of its responsibilities, under this Agreement without Xerox' prior written consent (which shall not be unreasonably withheld) shall be cause for termination of this Agreement.
- L.1.2 Xerox may assign this Agreement only to a parent, subsidiary, or affiliated firm, to a third party in connection with a merger, consolidation or joint venture, or to a third party upon a sale or transfer of substantially all of Xerox' business assets or substantially all of the assets of a division or group responsible for the Products.
- L.1.3 Dealer shall at all times maintain adequate networking capital, net worth, and financial resources to ensure its performance under this Agreement.
- L.1.4 Dealer is not appointed under this agreement to perform Authorized Xerox Service on Xerox-brand products other than for Xerox Memorywriters within the territory. Xerox has no obligation to provide Dealer with training, parts, or technical documentation for other Xerox-brand products. If Dealer chooses to independently service other Xerox-brand products, Dealer shall not represent itself as performing Authorized Xerox Service on those products.
- L.1.5 In performing Authorized Xerox Service, Dealer shall use only genuine Xerox replacement parts.
- L.1.6 Authorized Service Locations. Dealer shall perform Authorized Xerox Service only (1) at the Service Locations listed below or (2) at customer sites by service technicians dispatched from the Service Locations listed below. Additional Service locations may be added by mutual agreement of Xerox and Dealer.

 - 1. dba Britt Business Systems, Inc., 415 E. Broad Street, Suite 105, Columbus, OH 43215 / (614) 461-7714
 - 2. 3400 Lakeside Avenue, 2nd Floor, Cleveland, OH 44114 / (216) 575-1338.
 - 3. _____
- L.1.7 Service Records. At each Service Location listed above, Dealer shall maintain service records in a form satisfactory to Xerox. Such records shall be available to Xerox upon reasonable notice for Xerox' inspection and audit.
- L.1.8 At all times, and for all Products that Dealer is authorized to service, Dealer shall maintain an adequate and competent service organization reflecting favorably on Xerox' good name and reputation.
- L.1.9 Dealer may offer Xerox Maintenance Agreements through December 31, 1992, on behalf of Xerox to customers located within zones where Xerox service is available

M.1 MINIMUM DEALER SERVICE REQUIREMENTS

- M.1.1** Dealer shall perform all service, including warranty service, in accordance with Xerox' published service procedures.
- M.1.2** Trained service technicians. Dealer shall employ at each Service Location one or more service technicians qualified to service the Memorywriters. No technician shall be deemed qualified, or shall perform service on any Memorywriter, until he or she has been trained and/or certified by Xerox to service that Product. Training shall be provided at locations specified by Xerox at prices then in effect.
- M.1.3** Tools. Dealer shall maintain at each Service Location such necessary tools and equipment as Xerox may prescribe. Any special tools required for servicing Product shall be obtained from Xerox at prices then in effect.
- M.1.4** Service documentation. Dealer shall purchase sufficient technical manuals and service documentation to support the service technician(s) at each Service Location, as well as subscribe to any service documentation updates published by Xerox.
- M.1.5** Except for providing replacement units or parts for those that have failed under warranty, Xerox shall incur no cost or expense for service performed by Dealer.
- M.1.6** Customer complaints. If Xerox receives a customer complaint about Dealer's performance of service, Xerox may investigate the matter. Dealer shall cooperate fully in any such investigation and shall, at Dealer's expense, take reasonable corrective actions specified by Xerox. Xerox shall have access to Dealer's service records as necessary to conduct its investigation and to verify that corrective actions have been taken.

N.1 CONFIDENTIAL SERVICE DATA

- N.1.1** Service and technical data pertaining to the Products may be designated as confidential or proprietary by Xerox and, if so, shall be protected against reproduction and disclosure as provided in the current Dealer Agreement.

O.1 DELIVERY AND WARRANTY OF REPLACEMENT PARTS

- O.1.1** Xerox shall use its best efforts to deliver parts promptly, but failure to meet delivery dates specified by Dealer is not a material breach. If a part is in short supply, Xerox shall allocate deliveries in an equitable and non-discriminatory manner, taking into account the needs of other dealers and Xerox' own service organization.
- O.1.2** Parts may be new or used, at Xerox' option.
- O.1.3** Xerox warrants that parts and supplies purchased by Dealer shall be free from defects in material and workmanship for thirty (30) days after installation by Dealer for the first end-user customer. Xerox' sole obligation shall be to repair or replace defective parts or supplies. Xerox' decision as to whether a part or supply is defective shall be conclusive and binding. Dealer shall not return parts or supplies without Xerox' prior authorization, and Xerox may require verification that the parts or supplies failed within the warranty period. Xerox shall bear the cost of shipping returned parts and supplies and shall specify the method of shipment.

O.1.4 XEROX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES ON PARTS AND SUPPLIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. XEROX SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

O.1.5 Abuse of warranty claims procedure. Xerox may periodically monitor the number of parts claimed to have failed under warranty in relation to Dealer's purchases of Supplies and parts from Xerox. If, in Xerox' judgment, Dealer's warranty claims are unreasonably high in relation to those of other dealers or the experience of Xerox' own service organization, Xerox or its designee may audit Dealer's records to ensure that the warranty claims procedure is not being abused. This Service Addendum may be terminated immediately and without opportunity to cure if Dealer fails to cooperate in any such audit or the audit reveals fraudulent warranty claims.

P.1 WARRANTY SERVICE

P.1.1 Dealer is responsible for ensuring that adequate warranty service is provided on each Memorywriter equipment sold by Dealer.

P.1.2 Within the Territory, Dealer shall offer, on behalf of Xerox, customer on-site warranty service on each unit of Memorywriter equipment sold by Dealer. If Dealer is requested by an end-user within the Territory to perform warranty service on a unit of Memorywriter equipment not sold by Dealer, Dealer may either perform the warranty service, refer the customer to the selling dealer, or contact Xerox for instructions.

P.1.3.1 Dealer shall use its best efforts to determine before each unit of Memorywriter equipment is delivered to the first end-user purchaser whether warranty service outside the Territory will be required (as when a purchaser within the Territory intends to move the Memorywriter equipment to a location outside the Territory). If Dealer determines at any time that a unit requires warranty service outside the Territory, Dealer shall notify the customer that Dealer is unable to provide such warranty service and shall either:

P.1.3.2.1 Contact Xerox for instructions. Xerox may agree to provide warranty service if the unit will be located in a zone where Xerox service is then available.

or,

P.1.3.2.2 Dealer may enter into an arrangement with another Authorized Xerox Service Dealer for that dealer to provide warranty service on Dealer's behalf in the territory where the unit will be located. Dealer shall not contract with anyone other than another Authorized Xerox Service Dealer to perform warranty service on Memorywriter equipment.

P.1.4 A Xerox warranty statement will be provided for each unit of Memorywriter equipment sold by Dealer. Dealer shall, at the time of sale, provide each purchaser with the Xerox warranty statement. Dealer shall not alter the Xerox warranty statement and shall make to other warranty commitment, written or oral, on Xerox' behalf. Any additional warranty offered by Dealer shall be Dealer's sole responsibility.

P.1.5 Warranty service shall be performed by Dealer on behalf of Xerox subject to the following conditions:

- P.1.5.1 The Memorywriter equipment must be the property of the first end-user purchaser, and the warranty claim must have been submitted within the warranty period specified in the Xerox warranty statement and must satisfy the other conditions of that statement.
- P.1.5.2 Xerox shall have the right to monitor customer satisfaction with Dealer's performance by conducting periodic customer surveys in accordance with Xerox' standard procedures for its own service organization.
- P.1.5.3 Dealer shall maintain adequate records of all warranty service work.
- P.1.5.4 Units of Memorywriter equipment and parts requiring replacement under warranty shall be returned to Xerox for replacement at no charge to Dealer. Dealer shall not return such units or parts without Xerox' prior authorization, and Xerox may require verification that the units or parts were replaced under warranty. Xerox shall bear the cost of shipping returned units and parts and shall specify the method of shipment.

Q.1 MANDATORY SAFETY RETROFITS

- Q.1.1 Any Xerox "mandatory safety retrofit" on Memorywriter equipment shall be installed by Dealer for its customers within the deadline set by Xerox for its own technical representatives. Xerox shall provide retrofit kits to Dealer at no charge, instruct Dealer in installation procedures, and compensate Dealer at Xerox' internally calculated cost for performing the same retrofit. Upon request, and subject to availability, Xerox may provide technical representatives to assist Dealer. Dealer shall compensate Xerox for such assistance at the hourly rate specified in the then current Xerox price list for Time and Materials service. Failure by Dealer to maintain the customer records required by the Dealer Agreement, or to cooperate fully with Xerox in resolving safety concerns, is grounds for immediate termination of this Agreement.

R.1 GENERAL

- R.1.1 Notices: All notices or demands required under this Agreement shall be in writing and made by personal service or sent via certified mail to the address of the receiving party as set forth in this agreement (or such different address as either party may designate by notifying the other party in writing).
- R.1.2 Governing Law: This Agreement shall be interpreted in accordance with the laws of New York State.
- R.1.3 Alternative Dispute Resolution: Xerox and Dealer agree that, before initiating any litigation concerning this Agreement or their respective obligations hereunder, they will attempt in good faith to resolve their dispute through an informal mini-trial procedure conducted substantially in accordance with the provisions of the Center for Public Resources' Model Mini-Trial Agreement. Each party covenants (1) not to unfairly use litigation or the threat of litigation as a means to harass or intimidate the other party and (2) not assert frivolous claims or defenses in any dispute between them.
- R.1.4 Attorney's Fees: In any suit between Xerox and Dealer concerning this Agreement or its subject mater, the party that is finally adjudicated to have liability shall pay the other party's reasonable attorneys' fees and costs of litigation.

- R.1.5 No Implied Waivers: Failure of either party to require strict performance by the other party of any provision shall not affect the first party's right to require strict performance thereafter. Waiver by either party of a breach of any provision shall not waive either the provision itself or any subsequent breach.
- R.1.6 Severability: A judicial determination that any provision of this Agreement is invalid in whole or part shall not affect the enforceability of other provisions.
- R.1.7 Entire Agreement: This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all previous proposals, representations, or understandings, whether oral or written. Modifications of this agreement must be in writing and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates shown below.

The foregoing is acceptable and agreed to:

XEROX CORPORATION

BY

Kenneth E. Sarvis

Manager, Contract Marketing

(Title)

(Date)

300 Main Street

(Address)

Rochester, New York 14445

(City, State, Zip)

Britt Products Corporation,

dba Britt Business Systems, Inc.

BY

Shellee Davis

Owner

(Title)

(Date)

415 E. Broad Street, Suite 105

(Address)

Columbus, OH 43215

(City, State, Zip)

Federal Communications Commission

Case No. 93-107 Exhibit No. R-6

Presented by RINGER

Disposition

Identified 8/31

Received

Rejected 8/31

Reporter

Date

BAN BINA LOXO
8/31/93